

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2340 OF 2002
IN
SUIT NO.1634 OF 2002

Chhotlal Hariram Trust
and another
Plaintiffs

versus

Kutchi House Co-operative
Hsg.Soc. Ltd. and others
Defendants

Mr.Milind Vasudeo i/by J.N.Surti for plaintiffs

Mr.S.K.Shah i/by Narayan & Narayan for
defendants.

Mr.A.K.Tripathi i/by O.P.Pandya for

CORAM : S.C.DHARMADHIKARI, J.

DATE : 8th July 2005

PC :

1. In this Notice of Motion, on 20th January 2005, Justice Karnik has recorded a statement of the learned advocate appearing for the plaintiff to the following effect :-

"Heard learned counsel for the plaintiff for sometime. Learned counsel for the plaintiff states that the draft of the Deed of Assignment/Conveyance/Transfer given by the defendants along with the letter dated 5th April, 1998 (Exhibit-

F1) contains many factual errors and therefore the draft was not agreed upon. He agrees to submit in this Court draft of the Deed of Assignment/Conveyance/Transfer containing the correct details which the plaintiff is willing to execute within a period of two weeks. Let the draft be submitted on or before 3rd February, 2005. S.O. to 4th February, 2005."

The plaintiffs contend that this statement was made by their advocate without instructions and without ascertaining the factual position. The advocate concerned has been joined as respondent to this Notice of Motion and he has filed an affidavit to clarify the position.

2. In my view, in the light of the fact that the advocate has filed an affidavit, it would not be fair to bind the parties by the statement made in Court and as recorded in the order dated 20th January 2005. Hence I proceed to hear Notice of Motion No.2340 of 2002 on its own merits.

3. In the light of the fact that Notice of Motion No.2340 of 2003 is being heard on merits, order dated 20th January 2005 is recalled. Notice of Motion no.1648 of 2005 is disposed off accordingly.

4. The present suit is filed by the plaintiff

for a declaration that the Deed of Assignment Exhibit F-1 is null, void, bad in law and not binding upon them. Coupled with this, a declaration is claimed that the plaintiffs are absolute owners of an immovable property namely Kutchi House, 307-A, Bhandarkar Road, Matunga, Mumbai-19. It is their case that they are the Lessees of the land and owners of the structure. Notice of Motion is taken for appointment of Court Receiver empowering him to collect rent/compensation from the tenants/ occupants of this property. Other interim prayers are such [(namely prayer clauses (a) and (c)] that they cannot be considered at an interlocutory stage. Mr.Vasudeo has pressed prayer clause (d) which is for an injunction against defendants 1 and 2, their servants, agents to restrain them from creating third party interest in the suit property.

5. Mr.Shah appears for defendants 1 and 2 and invites my attention to the affidavit which is filed by the defendants. It has been pointed out by the defendants that the suit is an abuse of the process of the Court inasmuch as the plaintiffs have transferred all their right, title and interest in respect of the suit

property in favour of defendants as far back as on 29th December 1994 by a Deed of Assignment. The Deed of Assignment has been registered with Registrar of Assurances on 9th September 1998 and the present suit is filed in January 2002 only with a view to harass the defendants. It is pointed out that even a proposal for transfer and mutation of lease-hold rights in respect of the property was submitted to the Corporation in May 2001 and defendant no.1 society has complied with all objections/requisitions. He states that all that is required to be done has been done by the first defendant society coupled with the fact that a sum of Rs.27,15,610/- has been paid. He invites my attention to the averments which are to the effect that the plaintiffs also are ready to comply with their lawful obligations. Therefore, according to him, this is not a fit case for grant of any interim reliefs.

6. I had heard this matter for some time on 24th June 2005 and recorded a statement of Mr.Shah appearing for defendants to this effect that an affidavit would be filed by the defendants disclosing details of the occupants/ members. Mr.Shah states that a list of the occupants along with the affidavit is filed and a copy thereof is

handed over to the advocate for the plaintiffs in the Court. This affidavit discloses that 26 persons are using 25 units and have been allotted share certificates bearing distinctive numbers, as set out at Exhibit-1 in support of this affidavit. Said affidavit is taken on record.

7. I am not inclined to grant the reliefs of appointment of Court Receiver nor is it permissible to issue any directions with regard to the documents that are placed on record by the plaintiff. This is not the stage where any documents could be either directed to be executed in favour of defendants or documents placed on record by the plaintiffs to be impounded. All these aspects would be considered as and when suit is heard.

8. An attempt to put an end to this matter by calling upon the parties to execute documents is not successful. All that can be directed is the present occupants/members of the first defendant society who are holding the share certificates and are in possession of the units, would not transfer, alienate or part with possession of their units without leave of this Court. In case any of them intends to transfer or dispose off

the units, they would be at liberty to make appropriate application seeking liberty of this Court and apply in terms thereof after giving two weeks prior notice to plaintiff's advocate. This order is passed with a view to preserve the status-quo at site. Ultimately, this is an old structure, but the land is situate in the heart of the city and is extremely valuable. To preserve and protect the status-quo, it is necessary that the members/ occupants do not create a situation whereby it will be difficult for the Court to safeguard the rights of parties at the trial. It is clarified that this order is without prejudice to the rights and contentions of the plaintiff as well as defendant society. It is further clarified that the society would be at liberty to undertake repairs as well as maintenance of the structure in question. It would be open for the society to pay all taxes, outgoings and other statutory dues. All such payments would be without prejudice to the rights and contentions of first defendant society. This order will also not prevent first defendant society from initiating appropriate proceedings to seek a conveyance and/or a declaration in their favour.

((-7-))

9. Name of respondent advocate be deleted from the array of parties at the request of Mr.Vasudeo.

(S.C.DHARMADHIKARI, J.)